

Message Text

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EA ONLY

E.O. 11652: GDS
TAGS: EGEN, ETRD, EINV, JA, RP
SUBJECT: RP/JAPAN ECONOMIC NEGOTIATIONS -- INVESTMENT GUARANTEES

REF: MANILA 16737

1. FOLLOWING IS THE TEXT OF THE JAPANESE PROPOSAL ON PRO-
TECTION AND SECURITY OF PROPERTY WHICH IS DESIGNED TO BE
INCORPORATED IN THE PROTOCOL OF A REVISED TREATY OF AMITY,
COMMERCE, AND NAVIGATION: BEGIN QUOTE: ARTICLE Q (REPEAT Q)

1. PROPERTY OF NATIONALS AND COMPANIES OF EITHER
PARTY SHALL RECEIVE THE MOST CONSTANT PROTECTION AND SE-
CURITY WITHIN THE TERRITORIES OF THE OTHER PARTY.

2. PROPERTY OF NATIONALS AND COMPANIES OF EITHER
PARTY SHALL NOT BE SUBJECTED TO EXPORPRIATION, NATIONALI-
ZATION, RESTRICTION OR ANY OTHER MEASURE THE EFFECT OF
WHICH WOULD BE TANTAMOUNT TO EXPORPRIATION, NATIONALI-
ZATION OR RESTRICTION, WITHIN THE TERRITORIES OF THE
OTHER PARTY UNLESS THE FOLLOWING CONDITIONS ARE COMPLIED
WITH:

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(A) THE MEASURES ARE TAKEN FOR A PUBLIC PURPOSE
AND UNDER DUE PROCESS OF LAW:

(B) THE MEASURES ARE NOT DISCRIMINATORY; AND

(C) THE MEASURES ARE TAKEN AGAINST PROMPT, ADEQUATE
AND EFFECTIVE COMPENSATION.

3. NATIONALS AND COMPANIES OF EITHER PARTY SHALL WITHIN THE TERRITORIES OF THE OTHER PARTY BE ACCORDED TREATMENT NO LESS FAVORABLE THAN THAT ACCORDED TO NATIONALS AND COMPANIES OF SUCH OTHER PARTY OR TO NATIONALS AND COMPANIES OF ANY THIRD COUNTRY WITH RESPECT TO THE MATTERS SET FORTH IN THE PROVISIONS OF PARAGRAPHS 1 AND 2 OF THE PRESENT ARTICLE.

THE PROVISIONS OF PARAGRAPH 2 OF ARTICLE Q OF THE TREATY PROVIDING FOR THE PAYMENT OF COMPENSATION SHALL EXTEND TO INTERESTS HELD DIRECTLY OR INDIRECTLY BY NATIONALS AND COMPANIES OF EITHER PARTY IN PROPERTY SUBJECTED TO EXPORPRIATION, NATIONALIZATION, RESTRICTION OR ANY OTHER MEASURE THE EFFECTS OF WHICH WOULD BE TANTAMOUNT TO EXPROPRIATION, NATIONALIZATION OR RESTRICTION WITHIN THE TERRITORIES OF THE OTHER PARTY.

COMPANIES IN WHICH NATIONALS AND COMPANIES OF EITHER PARTY HAVE A SUBSTANTIAL INTEREST SHALL WITHIN THE TERRITORIES OF THE OTHER PARTY BE ACCORDED:

(1) TREATMENT NO LESS FAVORABLE THAN THAT ACCORDED TO LIKE COMPANIES IN WHICH NATIONALS AND COMPANIES OF ANY THIRD COUNTRY HAVE A SUBSTANTIAL INTEREST WITH RESPECT TO THE MATTERS SET FORTH
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IN THE PROVISIONS OF ARTICLE 11 AND PARAGRAPHS 1 AND 2 OF ARTICLE 111, AND

(2) TREATMENT NO LESS FAVORABLE THAN THAT ACCORDED TO LIKE COMPANIES IN WHICH NATIONALS AND COMPANIES OF SUCH OTHER PARTY OR NATIONALS AND COMPANIES OF ANY THIRD COUNTRY HAVE A SUBSTANTIAL INTEREST WITH RESPECT TO THE MATTERS SET FORTH IN THE PROVISIONS OF PARAGRAPHS 1 AND 2 OF ARTICLE Q. END QUOTE.

2. THE PHILIPPINE REACTION TO THE ABOVE PROPOSAL WAS THAT THE PROVISIONS WHOULD BE IN AN INVESTMENT AGREEMENT AND NOT IN THE TREATY UNDER NEGOTIATION. THE GOP PANEL WAS REPORTED AS SAYING FURTHER THAT AT THE MOST THE GOP COULD ONLY ACCEPT PARAGRAPH 1.

3. COMMENT: THE JAPANESE PROPOSAL PRESENTS AN INTERESTING TACK WHICH APPEARS TO AFFORT SOME POSSIBILITIES ON WHAT WE HAVE BEEN SEEKING ON NON-DISCRIMINATION. WE WILL HAVE TO WAIT, HOWEVER, AND SEE IN WHAT FORM THE JAPANESE PROPOSAL FINALLY EMERGES, IF AT ALL. PLEASE NOTE
EA ONLY CAPTION.
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